IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

MONDAY, THE 23RD JULY 2007 / 1ST SRAVANA 1929

RCRev..No. 185 of 2007

RCA.120/2006 of RENT CONTROL APPELLATE AUTHORITY, KOZHIKODE
RCP.100/2005 of RENT CONTROL COURT, KOZHIKODE

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REVISION PETITIONER/APPELLANT/RESPONDENT:

AKKARAPARAMBATH MUHAMMED,
AGED 40, S/O.LATE ABOOBACKER KOYA,
3/400 A, KARAD ROAD, NADAKAVU, KACKERI
AMSOM AND DESOM, KOZHIKODE TALUK.

BY ADV. SRI.T.SETHUMADHAVAN
SRI.PUSHPARAJAN KODOTH
SRI.K.JAYESH MOHANKUMAR

RESPONDENTS/RESPONDENTS/PETITIONERS:

1. SAYED HUSSAIN AYDEED, AGED 69,
S/O.P.M.POOKOYA THANGAL, ACHUVEEDU,
KUTTICHIRA, NAGARAM AMSOM
AND DESOM, KOZHIKODE TALUK.

2. SYED MUHAMMED ASHRAF AYDEED,
AGED 49, S/O. SAYED HUSSAIN AYDEED DO. DO.

3. A.V.AYISHABI, AGED 67 YEARS,
W/O.SAYED HUSSAIN AYDEED DO. DO.

4. MRS.MAIMOONA AYDEED, AGED 42 YEARS,
W/O. SAYED MUHAMMED ASHRAF AYDEED, HILAL MANZIL,
PANTHALAYANI AMSOM AND DESOM, KOYILANDY TALUK,
(RESPONDENTS 2 TO 4 REPRESENTED BY THEIR POWER
OF ATTORNEY HOLDER NO.1 SAYED HUSSAIN AYDEED.)

BY ADV. SRI.V.V.SURENDRAN
SRI.P.A.HARISH

THIS RENT CONTROL REVISION HAVING COME UP FOR ADMISSION ON 23/07/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

ORDER ON I.A.NO.1426/07 IN RCR 185/07

DISMISSED

23.7.2007

SD/-J.B.KOSHY, JUDGE
SD/-K.P.BALACHANDRAN, JUDGE

/TRUE COPY/

J.B.Koshy & K.P.Balachandran, JJ.

R.C.R.No. 185 of 2007

ORDER

Balachandran, J.

This revision is at the instance of the tenant. R.C.P.No.100/05 was filed by the respondents before the Rent Control Court, Kozhikode for eviction of the petitioner/tenant under Section 11(4)(ii) of the Kerala Buildings (Lease and Rent Control) Act, 1965 (hereinafter referred to as 'the Act'). The Rent Controller found, on evidence, that ground for eviction under Section 11(4)(ii) of the Act is established and consequently allowed the petition for eviction under Section 11(4)(ii) of the Act. The petitioner/tenant filed R.C.A.No.120/06 assailing the said order of eviction before the Rent Control Appellate Authority, Kozhikode. The appellate authority dismissed the appeal concurring with the findings of fact entered into by the Rent Control Court. Hence, this revision.

2. It is vehemently contended before us by the learned counsel for the petitioner, on the strength of the decision of the Apex Court in **Reghunathan v. Varghese** (2005 (4) KLT 147), that the modifications effected by the petitioner/tenant to the rented premises are modifications consistent with the user of the building for the purpose for which it was let out and that the modifications and alterations effected do not in any manner destroy or reduce the value and utility of the building materially and permanently and therefore, the authorities below erred in ordering eviction under Section 11(4)(ii) of the Act.

3. It is worthwhile to note that the petition for eviction itself was filed by the respondents invoking only ground under Section 11(4)(ii) of the Act alleging that the modifications and alterations effected by the petitioner has destroyed and reduced the value and utility of the building materially and permanently. They allege that a

toilet has been provided on the south eastern corner of the scheduled premises and the door of the toilet, at the time of letting, was from the northern side and access was possible only through inside the scheduled premises; that on inspection on 31.3.2005, it was found that the door provided for access to the toilet had been removed and that portion was closed with bricks and the said door was fixed on the western outer wall after demolishing a portion of the said wall whereby access was provided to the toilet from outside. The marble flooring, in almost half the floor area of the scheduled premises, was removed and excavation work was done throughout this area in such a manner that soil of the basement was removed up to a depth of about five feet for providing an underground storing area. It was also noticed that arrangements had been made to complete the formation of the underground godown by laying flooring tiles and providing a concrete slab above

the underground portion. Further, a new rolling shutter was fixed on the outer wall of the southern side of the scheduled building.

4. The respondents filed O.S.No.184/05 and a commission was deputed in the said suit to inspect the premises. On inspection by the Commissioner, it was found that three inches iron channel runners were fixed on the walls by digging holes on the wall and plywood doors were placed over the channels. New flooring was also found provided to the newly made underground godown. A temporary wooden platform was found fixed at a height of seven feet for the purpose storing articles of business for the petitioner. The petitioner/tenant contended that he is doing business in interior decoration materials, carpets, window curtains, vinyl floorings, door mats, glass films, etc.; that the entrance to the toilet was from outside even from the time of letting out of the building; that rolling shutters were fixed as the old door was

damaged being moth eaten; that the modification works in the interior of the building were done with the permission of the respondents; that the floor of a small portion inside the room was being lowered by the respondents themselves on the request of the petitioner at the time of taking the building on lease; that the wooden platform was fixed after informing the respondents and getting oral consent from them; that the works done by the petitioner has not affected the value and utility of the building and has not caused any damage to the building and the structures; that removing of earth and lowering of the floor has not affected the structure of the building, as the entire load bearing of the building is on concrete beams and pillars and that the works done by the petitioner have only enhanced the value and utility of the building.

5.The structures, modifications and alterations alleged are proved to have been done in the

scheduled building by the evidence of PWs 1 and 2, who filed Exhibit A2 commission report and Exhibit A3 sketch.It showed that the petitioner constructed an underground room at a depth of 4.2 feet and that the contention of the petitioner that the depth was only of two feet is incorrect. In Exhibit C1 report, the Advocate Commissioner stated that iron steps are provided for the underground godown and an air conditioner was also provided to the said underground room and also to the cabin constructed above the underground room. The cabin was constructed at a height of 3-4 feet from the scheduled premises. The flooring of the underground room was provided with ceramic tiles. The petitioner, in his evidence as RW1, admitted that he has constructed a cabin inside the scheduled room by providing iron runners fixed on the wall. The said cabin was being used as his office room. The commission report also showed that the door of the toilet was shifted so as to provide access to

the toilet from outside and wall was constructed on the portion from where the door was removed. It is after considering the entire evidence as regards modifications effected in the scheduled building that the Rent Control Court as also the appellate authority came to the concurrent conclusion that the petitioner/tenant has effected modifications to the building and has used the building in such a manner so as to destroy and reduce its value and utility materially and permanently.

6. The Apex Court in **Reghunathan's case** (supra) has, on the facts of that particular case, observed that the question depends on the facts of each case. The nature of the building, the purpose of letting, the terms of the contract and the nature of interference with the structure by the tenant are relevant for consideration. In appreciation of the evidence in that particular case, the Apex Court also observed that the destruction or damage has to be adjudged from the

stand point of the landlord and not that of the tenant. The building involved in that case was a 75 year old one, which according to the tenant, was 80 years old. Obviously, the building was then an old one. It was being let out for a period of 15 years for the conduct of a jewellery business. The modifications effected in the said building were that the windows on the northern, western and southern walls of the room were removed and was closed with bricks, the level of the floor was lowered, rafters cut, two concrete pillars erected and a rolling shutter fixed. No doubt, the Apex Court observed that lowering of the floor and tampering with the roof is of some significance and they could lead to impairment of the value and utility of the building materially and permanently. It was further observed that, that has to be judged in the light of the surrounding circumstances. A rolling shutter was fixed to provide more security for conduct of jewellery business. It was also

found that the height of the floor can be restored without impairment of the structure. It was further observed in that particular case that the landlord had not even pleaded that the alterations made by the tenant had destroyed or reduced the value or utility of the building materially and permanently. The case of the tenant was that the value of the building has only been enhanced. The Apex Court further held that the age of the building as also the purpose of letting cannot be ignored and therefore, it is not possible to infer that the acts of the tenant have destroyed or reduced the value or utility of the building materially and permanently. In that particular case, it was also admitted by the landlord that he will get a higher rent if the room is again let out to some other tenant. To put it in other words, the case considered by the Apex Court was one, where the landlord had no case that the value and utility of the 75 year old building, let out to the tenant for

conduct of jewellery business, has been materially and permanently destroyed or reduced on account of the alternations and modifications effected to the scheduled room in the manner in which it was done.

7. In the present case, what was let out to the tenant is comparatively a new building and not an old and dilapidated one. It was to suit the convenience of the petitioner/tenant that he has effected modifications including digging out of the floor to a depth of 4.2 feet so as to provide an underground storage space and constructed a cabin above the same at a height of about 3-4 feet from the floor level. From the point of view of the respondents, who are the landlords, the said alterations effected to the building has reduced and destroyed the value and utility of the building materially and permanently. The other modifications also cannot be said to be of having any the less importance in destroying the value and utility of the building materially and permanently considering

the fact that even according to the tenant, the building is a newly constructed one erected on concrete pillars and beams. The petitioner/tenant has practically destroyed, substantially and permanently, the value and utility of the scheduled building, though, for him, the modifications were made to suit his convenience and for his business purposes. In the circumstances, the authorities below, on a proper appreciation of the evidence in the case, has held on facts that the petitioner/tenant has used the building in such a manner so as to destroy and reduce its value and utility materially and permanently and has consequently ordered eviction under Section 11(4)(ii) of the Act. We are convinced, in the circumstances of the case, that eviction ordered concurrently by the authorities below is fully justified and that this revision is devoid of merit whatsoever and deserves only to be dismissed with costs.

8. Finally, it is urged by the counsel for the petitioner that reasonable time be afforded to the petitioner to search out another building and to shift his business. The petitioner/tenant, who has spoiled the building let out to him cannot remain in occupation of the same without making payment of some amount to restore the building to its original condition.

In the result, we dismiss this Rent Control Revision with costs. At the same time, we grant the petitioner time till 31.12.2007 to surrender vacant possession of the scheduled building to the respondents/landlords on the following conditions:

i. that he shall deposit the entire arrears of rent, if any, in the execution court with a detailed statement as to its correctness within three weeks from today.

ii. that he shall deposit within three weeks an amount of Rs.30,000/- by way of damages to restore the scheduled building to its original position,

subject of course, to the right of the respondents to move for recovery of damages, costs, etc. and to have the above amount set off as against the damages.

iii) that he shall file an affidavit before the execution court within one month from today, reporting that Condition Nos.1 and 2 are complied with and unconditionally undertaking that he will surrender vacant possession of the scheduled building to the respondents/landlords positively on or before 31.12.2007 and that he will continue to pay the future monthly rents on the due dates itself till he actually surrenders vacant possession of the scheduled building to the respondents/landlords and

iv. that in case the petitioner fails to comply with the above conditions, he shall not be entitled to the benefit of continuing in occupation of the scheduled building till 31.12.2007 and shall be liable to be evicted immediately on the expiry

of the aforesaid one month in execution of the order of eviction passed against him.

(J.B.Koshy, Judge)

23rd July, 2007

(K.P.Balachandran, Judge)

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